

## **Program Summary**

### **Arizona Navigable Stream Adjudication Commission**

#### **Program Overview**

Created in 1992 as a result of several years of litigation, the Arizona Navigable Stream Adjudication Commission (ANSAC) is a 5-member body whose responsibility is to determine the ownership of the beds of each of Arizona's 39,039 streams and rivers. The Commission determines ownership by establishing whether or not the watercourses were navigable at the time of statehood on February 14, 1912. If those waterways were navigable at the time of statehood, the land in their beds belongs to the state and would be held in public trust. If the waterways were not navigable, the land belongs to the current title holder.

The state government did not claim or disclaim ownership of any of its watercourses in 1912 when Arizona became a state. Years later, in 1985 the state filed a lawsuit claiming ownership of the bed of the Verde River and indicated that similar action might be taken regarding the beds of other Arizona watercourses. In 1987, the Legislature responded to the state's lawsuit by passing a statute that disclaimed ownership of all riverbeds in the state with exception of the Colorado, Gila, Verde, and Salt Rivers.

A lawsuit by the Arizona Center for Law in the Public Interest led to a 1991 Arizona Court of Appeals decision that the Legislature's 1987 statute violated the Arizona Constitution and legal precedent set by the United States Supreme Court. Supreme Court precedent held that states were to retain ownership of the beds of streams and rivers that were navigable at the time of statehood and that the land was to be held in public trust and, therefore, could not be conveyed unless such a conveyance promoted a public purpose.

The 1991 ruling led to the 1992 creation by the Legislature of the Arizona Navigable Stream Adjudication Commission (A.R.S. § 37-1121). As an independent agency, ANSAC's charge is to review evidence presented by the State Land Department and other parties regarding the navigability of Arizona watercourses as of February 14, 1912.

After nearly a decade of holding hearings and making determinations, an Arizona Court of Appeals ruling in 2002 determined that the Commission's criteria for determining navigability were biased and ANSAC began anew.

Since that court ruling, ANSAC has held additional hearings and reviewed evidence regarding all of Arizona's 39,039 watercourses, determining all of them non-navigable at the time of statehood.

After holding a hearing, ANSAC reviews the evidence presented and later issues a decision regarding the navigability of the watercourses considered in the hearing. The commission also must publish a report regarding each decision. Upon the publication of each report, there is a 180-day period during which the State Land Department (SLD) may seek judicial review of the decisions of the commission. All other parties have 270 days to seek judicial review. Once the appeal period has expired, ANSAC's decision becomes final.

On June 30, 2006, the State Land Department filed an appeal of ANSAC's decision that the Lower Salt River in Maricopa County was non-navigable at the time of statehood. SLD states that it appealed because there is evidence that the Lower Salt may have been navigable at the time of statehood. SLD therefore feels it is legally bound to appeal the decision in order to serve as a public trustee for the land. The case is pending.

Currently, the Commission is set to sunset at the end of FY 2008. Once all reports have been published, all appeal periods have expired and all pending appeals have been resolved, the commission will be terminated.

#### **Program Funding**

The Navigable Stream Commission receives its funding from the General Fund. The commission is funded at \$267,800 for FY 2007, which is a 42% increase from FY 2002. *Table 1* displays historical funding information for ANSAC using data from FY 2002 through FY 2007.

<b>Table 1</b>	
<b>Arizona Navigable Stream Adjudication Commission</b>	
	<b><u>General Fund</u></b>
FY 2002	\$188,300
FY 2003	176,600
FY 2004	157,000
FY 2005	159,300
FY 2006	216,700 <sup>1/</sup>
FY 2007	267,800
<sup>1/</sup> Amount includes a \$50,000 supplemental appropriation.	

#### **Performance Measures**

In the past, ANSAC has measured its performance by how many hearings it has held each year and how many watercourses it has adjudicated. However, now that the commission has reached determinations on

all of Arizona's 39,039 watercourses, there are no more hearings to hold.

Currently, the commission's performance is measured by how many final reports it publishes. Although ANSAC is finished holding hearings, it has only published 12 of 32 reports it is required to publish.

ANSAC expects to publish the remaining 20 reports by the end of FY 2007. *Table 2* indicates the number of rivers and streams adjudicated, the number of hearings held since ANSAC began holding hearings under the new standards in FY 2003, and the number of reports published.

<b>Table 2</b> <b>Arizona Navigable Stream Adjudication Commission</b> <b>Performance Measures</b>					
<b><u>Performance Measures</u></b>	<b><u>FY 2003</u></b>	<b><u>FY 2004</u></b>	<b><u>FY 2005</u></b>	<b><u>FY 2006</u></b>	<b><u>FY 2007</u></b> <b><u>Estimate</u></b>
Number of Streams and Rivers Adjudicated	10,482	10,050	9,805	10,122	0
Hearings Held	8	13	15	17	0
Reports Completed	1	8	0	3	20